

## PART ONE – GENERAL INFORMATION AND STATISTICS

### I. Questions for non-Contracting States

1) Please indicate why your State is not a Contracting State to the Evidence Convention (select as many answers as are relevant):

- The availability of possibilities under internal law, bilateral or regional agreements, treaties or instruments means there is no added value in becoming a Party to the Evidence Convention
- The number of cross-border litigation cases that require evidence to be taken from abroad is limited and does not require a global framework
- There are legal obstacles in your domestic legal system that prevent your State from becoming a Party to the Convention – if so, please specify what these are:
- Your State considers that there are specific issues arising out of the Evidence Convention (*e.g.*, the absence of deadlines for the execution of requests for the taking of evidence, rules as to the language of the Letter of Request to be used under the Convention, etc.) which dissuade your State from joining the Evidence Convention – please explain:
- Your State does not have the means or resources to properly implement the Evidence Convention
- The question of becoming a Party to the Convention has never been examined in detail
- Other reason – please explain:

2) Please forward a list of any bilateral or regional agreements, treaties or instruments to which your State is a Party and that provide rules for the taking of evidence abroad:

a) [Supplementary agreements between Parties to the Hague Conventions on Civil Procedure of 1905 and 1954 \(Ergänzungsabkommen mit Vertragsstaaten der Haager Zivilprozessabkommen von 1905 und 1954\)](#)

In principle, these supplementary agreements also apply to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (Evidence Convention) (Haager Beweisaufnahmeübereinkommen - HBÜ) pursuant to Article 31 of that Convention. In relations between the Member States of the European Community, however, they have probably largely lost their practical significance as a result of Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (Taking of Evidence Regulation) (although Article 21 of the Taking of Evidence regulation explicitly allows its maintenance). Agreements between the Member States of the European Community are therefore not listed below:

[Deutsch-Norwegian Agreement of 17 June 1977 concerning further simplification of reciprocal legal assistance under the Hague Convention relating to civil procedure of 1 March 1954 \(Deutsch-Norwegische Vereinbarung vom 17. Juni 1977 zur weiteren Vereinfachung des Rechtsverkehrs nach dem Haager Übereinkommen vom 1. März 1954 über den Zivilprozess\).](#)

[German-Swiss Agreement of 30 April 1910 concerning further simplification of reciprocal legal assistance \(Deutsch-Schweizerische Vereinbarung vom 30. April 1910 zur weiteren Vereinfachung des Rechtshilfeverkehrs\)](#)

b) [Other Agreements](#)

German-British Convention of 20 March 1928 regarding legal proceedings in civil and commercial matters (Deutsch-Britisches Abkommen vom 20. März 1928 über den Rechtsverkehr), insofar as it also applies to states other than the United Kingdom; e.g. Australia, the Bahamas, Canada, Kenya, Malaysia, New Zealand and Nigeria. In connection with the United Kingdom itself, the statement made under (a) above applies.

German-Moroccan Agreement of 29 October 1985 on reciprocal assistance and legal information in civil and commercial matters (Deutsch-Marokkanischer Vertrag vom 29. Oktober 1985 über die Rechtshilfe und die Rechtsauskunft in Zivil- und Handelssachen).

German-Tunisian Agreement of 19 July 1966 on legal redress and legal assistance, the recognition and execution of court decisions in civil and commercial matters as well as arbitral jurisdiction in commercial matters (Deutsch-Tunesischer Vertrag vom 19. Juli 1966 über Rechtsschutz und Rechtshilfe, die Anerkennung und Vollstreckung gerichtlicher Entscheidungen in Zivil- und Handelssachen sowie über die Handelsschiedsgerichtsbarkeit).

- 3) Is your State currently studying the Evidence Convention or does your State envisage studying it with a view to becoming a State Party in the near future?
- YES – please specify (status of considerations in your State, etc.):
- NO

## II. Questions for Contracting States

### A. Contact details for designated Authorities

- 4) Please check the contact information as contained on the HCCH website with regards to the **Central Authority(ies)** designated by your State (Arts 2 and 24(2)). If one of the following categories of information is missing then please provide it below (please provide both a postal address and a street address, if these are not identical):

#### **Bavaria**

Der Präsident  
des Oberlandesgerichts München  
Prielmayerstrasse 5  
80335 München

Postal address:	80097 München
Telephone:	+49 (89) 5597-02
Fax:	+49 (89) 5597-3575
E-mail:	<a href="mailto:poststelle@olg-m.byern.de">poststelle@olg-m.byern.de</a>
Website:	<a href="http://www.jutiz.bayern.de/gericht/olg/m">www.jutiz.bayern.de/gericht/olg/m</a>
Language of communication:	German

#### **Baden-Württemberg**

Der Präsident  
des Amtsgerichts Freiburg  
Holzmarkt 2

79098 Freiburg

Telephone: +49 (761) 205-0  
 Fax: 49 (761) 205-1800  
 E-mail: [poststelle@agfreiburg.justiz.bwl.de](mailto:poststelle@agfreiburg.justiz.bwl.de)  
 Website: [www.amtsgericht-freiburg.de](http://www.amtsgericht-freiburg.de)  
 Languages of communication: German, English

### **Berlin**

Senatsverwaltung für Justiz von Berlin  
 Salzburger Strasse 21 – 25  
 10825 Berlin

Telephone: +49 (30) 9013-0  
 Fax: +49 (30) 9013-2008  
 E-mail: [poststelle@senjust.verwalt-berlin.de](mailto:poststelle@senjust.verwalt-berlin.de)  
 Website: [www.berlin.de/senjust](http://www.berlin.de/senjust)  
 Language(s) of communication: German

### **Brandenburg**

Ministerium der Justiz  
 des Landes Brandenburg  
 Heinrich-Mann-Allee 107  
 14473 Potsdam

Postal address: 14460 Potsdam

Telephone: +49 (331) 866 – 0  
 Fax: 49 (331) 866 – 30 80  
 E-mail: [Poststelle@mdj.brandenburg.de](mailto:Poststelle@mdj.brandenburg.de)  
 Website: [www.mdj.brandenburg.de](http://www.mdj.brandenburg.de)  
 Language of communication: German

### **Bremen**

Die Präsidentin  
 des Landgerichts Bremen  
 Domsheide 16  
 28195 Bremen

Telephone: +49( 421) 3614-200  
 Fax: +49 (421) 3611-5837  
 E-mail: [office@landgericht.bremen.de](mailto:office@landgericht.bremen.de)  
 Website: [www.landgericht.bremen.de](http://www.landgericht.bremen.de)  
 Language of communication: German

### **Hamburg**

Der Präsident  
 des Amtsgerichts Hamburg  
 Sievekingplatz 1  
 20355 Hamburg

Telephone: +49 (40) 428 28-0  
 Fax: +49 (40) 428 43-4318/4319

E-mail:  
[VerwaltungAmtsgerichtHamburg@ag.justiz.hamburg.de](mailto:VerwaltungAmtsgerichtHamburg@ag.justiz.hamburg.de)  
 Languages of communication: German, English

### **Hesse**

Der Präsident  
 des Oberlandesgerichts Frankfurt am Main  
 Zeil 42  
 60313 Frankfurt am Main

Telephone: +49 (69) 1367-01  
 Fax: +49 (69) 1367-2976  
 E-mail: [verwaltung@olg.justiz.hessen.de](mailto:verwaltung@olg.justiz.hessen.de)  
 Website: [www.olg-franfurt.justiz.hessen.de](http://www.olg-franfurt.justiz.hessen.de)  
 Language of communication: German

### **Mecklenburg-Western Pomerania**

Justizministerium Mecklenburg-Vorpommern  
 Puschkinstrasse 19 – 21  
 19055 Schwerin

Telephone: +49 (385) 588-0  
 Fax: +49 (385) 588-3453  
 E-mail: [poststelle@jm.mv-regierung.de](mailto:poststelle@jm.mv-regierung.de)  
 Website : [www.regierung-mv.de/cms2/Regierungsportal\\_prod/Regierungsportal/de/jm/index.jsp](http://www.regierung-mv.de/cms2/Regierungsportal_prod/Regierungsportal/de/jm/index.jsp)  
 Language of communication: German

### **Lower Saxony**

Niedersächsisches Justizministerium  
 Am Waterlooplatz 1  
 30169 Hannover

Telephone: +49 (511) 120-0  
 Fax: +49 (511) 120-5170/5181  
 E-mail: [poststelle@mj.niedersachsen.de](mailto:poststelle@mj.niedersachsen.de)  
 Website: [www.mj.niedersachsen.de/master/C694\\_L20\\_DO.html](http://www.mj.niedersachsen.de/master/C694_L20_DO.html)  
 Language of communication: German

### **North-Rhine/Westphalia**

Die Präsidentin  
 des Oberlandesgerichts Düsseldorf  
 Cecilienallee 3  
 40474 Düsseldorf

Telephone: +49 (211) 4971-0  
 Fax: +49 (211) 4971 - 548  
 E-mail: [poststelle@olg-duesseldorf.nrw.de](mailto:poststelle@olg-duesseldorf.nrw.de)  
 Website: [www.olg-duesseldorf.nrw.de/copy/index.htm](http://www.olg-duesseldorf.nrw.de/copy/index.htm)  
 Language of communication: German

### **Rhineland-Palatinate**

Ministerium der Justiz Rheinland-Pfalz

Ernst-Ludwig-Straße 3  
55116 Mainz

Telephone: +49 (6131) 16 - 0  
 Fax: +49 (6131) 16- 4939  
 E-mail: poststelle@min.jm.rlp.de  
 Website: www.justiz.rlp.de  
 Language of communication: German

### **Saarland**

Ministerium der Justiz,  
Arbeit, Gesundheit und Soziales  
Franz-Josef-Röder-Strasse 23  
66119 Saarbrücken

Telephone: +49 (681) 501 - 00  
 Fax: +49 (681) 501 - 3098  
 E-mail: poststelle@justiz-soziales.saarland.de  
 Website: www.justiz-soziales.saarland.de  
 Language of communication: German

### **Saxony**

Der Präsident  
des Oberlandesgerichts Dresden  
Schlossstrasse 1  
01067 Dresden

Postal address: Postfach 12 07 32  
01008 Dresden

Telephone: +49 (351) 446 - 0  
 Fax: +49 (351) 446 - 1299  
 E-mail: verwaltung-olg@olg.justiz.sachsen.de  
 Website: [www.justiz.sachsen.de/olg/](http://www.justiz.sachsen.de/olg/)  
 Language of communication: German

### **Saxony-Anhalt**

Ministerium der Justiz des Landes Sachsen-Anhalt  
Domplatz 2 – 4  
39104 Magdeburg

Postal address: Postfach 37 64  
39012 Magdeburg

Telephone: +49 (391) 567 - 01  
 Fax: +49 (431) 567 – 61 80  
 E-mail: oststelle@mj.sachsen-anhalt.de  
 Website: www.mj.sachsen-anhalt.de  
 Language of communication: German

### **Schleswig-Holstein**

Ministerium für Justiz,  
Arbeit und Europa des Landes Schleswig-Holstein  
Lorentzendamm 35

24103 Kiel

Postal address: Postfach 71 45  
24171 Kiel

Telephone: +49 (431) 988 - 0  
Fax: +49 (431) 988 – 38 70  
E-mail: Poststelle@jumi.landsh.de  
Website: www.mjae.schleswig-holstein.de  
Language of communication: German

### Thuringia

Thüringer Justizministerium  
Werner-Seelenbinder-Strasse 5  
99096 Erfurt

Postal address: Postfach 90 04 62  
99107 Erfurt

Telephone: +49 (361) 3795 - 000  
Fax: +49 (361) 3795 - 888  
E-mail: poststelle@tjm.thueringen.de  
Website: www.thueringen.de/de/justiz/content.asp  
Language of communication: German

- 5) Please also verify the contact information as contained on the HCCH website with regards to the following authorities in your State, *if applicable*. If one of the following categories of information is missing then please provide it below (please provide both a postal address and a street address, if these are not identical):
- a. **Other authorities** that may be designated in addition to the Central Authority (Art. 24(1)):
    - Name of authority:
    - Address:
    - Telephone:
    - Fax:
    - E-mail:
    - Website:
    - Language(s) of communication:
    - Name of contact person:
  - b. For those States Parties with more than one legal system, the authorities of one such system that the Contracting State has designated to have exclusive competence to execute Letters of Request (Art. 25):
    - Name of authority:
    - Address:
    - Telephone:
    - Fax:
    - E-mail:
    - Website:
    - Language(s) of communication:
    - Name of contact person:
  - c. The designated **competent authority** that authorises members of the judicial personnel of the Requesting Authority to be present at the execution of a Letter of Request (Art. 8):

The Central Authorities; see list under question 4 above.

- d. The **appropriate authority** that grants permission for the taking of evidence by a diplomatic officer or consular agent of nationals of a State that he or she represents (Art. 15(2)):

Name of authority:

Address:

Telephone:

Fax:

E-mail:

Website:

Language(s) of communication:

Name of contact person:

- e. The **competent authority** that grants permission for the taking of evidence by a diplomatic officer or consular agent of nationals of the State in which he or she exercises his functions or of a third State (Art. 16):

The Central Authorities; see list under question 4 above.

- f. The **competent authority** that grants permission for the taking of evidence by a commissioner (Art. 17):

The Central Authorities, see list under question 4 above.

- g. The **competent authority** to which a diplomatic officer, a consular agent or a commissioner (according to Arts 15, 16 or 17), may apply to seek appropriate assistance to obtain evidence by compulsion (Art. 18):

The taking of evidence pursuant to Article 16 (1) is only permissible if it concerns citizens of a third state or stateless persons. The Central Authorities give permission/approval in such cases; see list under question 4 above.

In the case of Article 17, the Central Authorities; see list under question 4 above.

## B. Statistics

### Chapter I (Letters of Request – Incoming)

Preliminary remark to questions 6 to 8:

In Germany, no official statistics are kept on the frequency and content of requests for mutual assistance pursuant to the Evidence Convention or on the time required to process them. The judicial departments of the Länder, which appoint the Central Authorities for their area of responsibility, have an informal overview, but are only able to provide limited information on content-related aspects of Letters of Request and the time required to process them. The following information is based on their records. It is only of limited informative value.

- 6) The following questions relate to the number of Letters of Request *addressed to your State* under the Evidence Convention:

- a. Please complete the following table to indicate *how many incoming Letters of Request* the Central Authority(ies) of your State received in the past five years. Please also note, if possible for each year, the country(ies) from which your State received the most Letters of Request.

2003	2004	2005	2006	2007
Number: <b>711</b> State(s): <i>Poland,</i> <i>Czech Republic,</i> <i>Switzerland.</i>	Number: <b>299</b> State(s): <i>Czech Republic,</i> <i>USA,</i> <i>Switzerland.</i>	Number: <b>199</b> State(s): <i>Turkey,</i> <i>Switzerland,</i> <i>Romania.</i>	Number: <b>295</b> State(s): <i>Turkey,</i> <i>Switzerland,</i> <i>USA</i>	Number: <b>297</b> State(s): <i>Turkey,</i> <i>Switzerland,</i> <i>USA</i>

- b. Of the total number of Letters of Request received in **2007**, please divide these depending on the nature of the evidence that was sought and complete the following table with respect to the *time that lapsed* between the Central Authority(ies) of your State receiving a Letter of Request and executing that request (*i.e.*, transmitting the evidence back to the requesting State).

For example, if your State executed 12 Letters of Request for the taking of oral evidence and that took between 4 and 6 months, please write the number "12" in the relevant box. In the case of Letters of Request that requested more than one type of evidence, please provide a separate answer for each type of evidence that was sought (this also enables you to take into account any variations in execution times relevant to the different types of evidence sought):

Nature of Evidence Sought	Less than 2 months	Between 2 and 4 months	Between 4 and 6 months	Between 6 and 12 months	More than 12 months	Returned unexecuted (Art. 12)	Cases currently pending
Oral Evidence	1	39	41	9		11	4
Documentary Evidence	1	2			22		
Bank records							
Written responses to written interrogatories	2						
Inspection of Personal Property							
Inspection of Real Property	2						
Blood tests		1				2	
Other evidence (please specify below the nature of the evidence)						22	

Nature of Evidence Sought	Less than 2 months	Between 2 and 4 months	Between 4 and 6 months	Between 6 and 12 months	More than 12 months	Returned unexecuted (Art. 12)	Cases currently pending
sought)							
Performance of other judicial act (please specify below the nature of the act)						1	

Comments relating to "[o]ther evidence":

Comments relating to "[p]erformance of other judicial act":

- c. How many of the total amount of these Requests sought evidence from a party?
- d. How many of the total amount of these Requests sought evidence from a non-party witness?
- e. If your State is not able, for whatever reason, to complete the above table in question 6 b., or to answer questions 6 c. and 6 d., please provide any other relevant statistical information that you may have:

### **Chapter I (Letters of Request – Outgoing)**

- 7) The following questions relate to the number of Letters of Request *sent by your State* under the Evidence Convention. These questions are likely to require some consultation with the (main) courts in your State that (may) have previously forwarded Letters of Request:
  - a. Please complete the following table to indicate *how many outgoing Letters of Request* the judicial authorities of your State have sent to Central Authorities of other Contracting States in the past five years. Please also note the country(ies) to which your State sent the most Letters of Request.

2003	2004	2005	2006	2007
Number: <b>564</b> State(s): <i>USA,</i> <i>Switzerland,</i> <i>Poland.</i>	Number: <b>250</b> State(s): <i>USA,</i> <i>Switzerland,</i> <i>Turkey.</i>	Number: <b>224</b> State(s): <i>USA,</i> <i>Switzerland,</i> <i>Turkey.</i>	Number: <b>196</b> State(s): <i>USA,</i> <i>Switzerland,</i> <i>Turkey.</i>	Number: <b>197</b> State(s): <i>USA,</i> <i>Switzerland,</i> <i>Turkey.</i>

- b. Of the total number of Letters of Request sent in **2007**, please divide these depending on the nature of the evidence that was sought and complete the following table with respect to the *time that lapsed* between the judicial authority of your State sending a Letter of Request and receiving the relevant evidence.

For example, if your State sent 17 Letters of Request for the taking of oral evidence and it took between 4 to 6 months to receive the evidence that was requested in each of those, please write the number "17" in the relevant box. In the case of Letters of Request that requested more than one type of evidence, please provide a separate answer for each type of evidence that was sought (this also enables you to take into account any variations in execution times relevant to the different types of evidence sought):

Nature of Evidence Sought	Less than 2 months	Between 2 and 4 months	Between 4 and 6 months	Between 6 and 12 months	More than 12 months	Returned unexecuted (Art. 12)	Cases currently pending
Oral Evidence	13	19	7	7	2		5
Documentary Evidence	1						1
Bank records							
Written responses to written interrogatories					6		
Inspection of Personal Property							
Inspection of Real Property							
Blood tests		1	1		7	7	3
Other evidence (please specify below the nature of the evidence sought)							
Performance of other judicial act (please specify below the nature of the act)	1		1		1		1

Comments relating to "[o]ther evidence":

Comments relating to "[p]erformance of other judicial act":

- c. How many of the total amount of these Requests sought evidence from a party?
- d. How many of the total amount of these Requests sought evidence from a non-party witness?

- e. If your State is not able, for whatever reason, to complete the above table in question 7 b., or to answer questions 7 c. and 7 d., please provide any other relevant statistical information that you may have:

***Chapter II (Taking of evidence by Diplomatic Officers, Consular Agents and Commissioners – Incoming and outgoing cases)***

- 8) If your State has not objected to the application of Chapter II of the Evidence Convention (or part thereof):

- a. Please indicate how many times your State has been involved in incoming (evidence taken in your State) and outgoing (evidence taken in another State Party) cases for the taking of evidence under Chapter II since 2003:

Incoming cases:

Outgoing cases:

- b. Of these cases, if applicable, how many were executed? If a case(s) has (have) not been executed, please explain the reason(s) for this:

Incoming cases:

Outgoing cases:

- c. With respect to these cases, if applicable, please specify the average time required for their execution:

Incoming cases:

Outgoing cases:

- d. In how many of these cases, if applicable, was the evidence taken by (please note figures for both if relevant):

Incoming cases:

[ ] Diplomatic officers or consular agents – specify number of cases:

[ ] Commissioners – if evidence was taken by Commissioners (specify number of cases: ), please indicate if the Commissioner was designated by the State where the evidence was taken or the State where the evidence was produced:

Outgoing cases:

[ ] Diplomatic officers or consular agents – specify number of cases:

[ ] Commissioners – if evidence was taken by Commissioners (specify number of cases: ), please indicate if the Commissioner was designated by the State where the evidence was taken or the State where the evidence was produced:

- e. If applicable, how many of these Requests sought evidence from a party?

Incoming cases:

Outgoing cases:

- f. If applicable, how many of these Requests sought evidence from a non-party witness?

Incoming cases:

Outgoing cases:

- g. Please indicate the nature of the main type of evidence that was sought in these cases if applicable (see the categories identified in questions 6) and 7)):

Incoming cases:

Outgoing cases:

### C. General appreciation of the Evidence Convention

- 9) Please indicate below how your State rates the general operation of the Evidence Convention:

The Central Authorities consider the operation of the Evidence Convention to be generally good. In relation to some countries, however, operational shortcomings still need to be overcome.

- Excellent  
 Good  
 Satisfactory  
 Unsatisfactory

If your State considers that the general operation of the Evidence Convention is good, satisfactory or unsatisfactory, please indicate what particular aspects of the Convention your State considers require improvement or where your State has encountered difficulties. For any areas that require improvement, please also indicate whether your State considers that solutions could be developed in specific *Conclusions and Recommendations* to be adopted by the next Special Commission, a *Guide to Good Practice* and / or a *Practical Handbook* on the Convention or a *Protocol* to the Convention.

[It could be useful to draw up multilingual forms.](#)

[The introduction of deadlines for processing Letters of Request could also be useful.](#)

#### D. Case law and reference work

10) The Permanent Bureau invites States Parties to provide copies of any guides or practical information that may have been produced for the assistance of their judicial authorities or other authorities when sending or executing a Letter of Request under the provisions of the Evidence Convention.

11) The Permanent Bureau invites States Parties to provide copies of decisions rendered since 2003 (or from before this date if these have not already been provided to the Permanent Bureau) in relation to the Evidence Convention. If the decision is in a language other than English or French, a summary into either of these languages would be appreciated.

Please find a list of recent decisions relating to the Evidence Convention below; it makes no claim to completeness. A summary is not possible due to the time and cost involved.

**Court:** le Higher Regional Court, 16th Civil Senate  
**Date of decision:** 6 July 2007  
**File no.:** 16 VA 5/07  
**Document type:** Decision

#### For pre-trial discovery for civil proceedings in a US court and for the submission of documents.

##### Source references

OLGR Celle 2007, 658-660 (Guiding principle and substantiation)  
 NJW-RR 2008, 78-80 (Guiding principle and substantiation)  
 IPRax 2008, 350-352 (Guiding principle and substantiation)

This decision is cited in the following source:

Rolf Stürner, IPRax 2008, 339-343 (discussion of the decision)

**Court:** OLG Düsseldorf 3<sup>rd</sup> Civil Senate  
**Date of decision:** 14 June 2006  
**File no.:** I-3 VA 2/06, 3 VA 2/06  
**Document type:** Decision

#### Letter of Request from a court in the USA for pre-trial discovery: witness contests approval of the Letter of Request

##### Source references

JMBI NW 2007, 67-68 (Guiding principle and substantiation)  
 OLGR Düsseldorf 2007, 393-395 (Guiding principle and substantiation)

**Court:** OLG Frankfurt 20th Civil Senate

**Date of decision:** 26 March 2008  
**File no.:** 20 VA 13/07  
**Document type:** Decision

- 12) The Permanent Bureau invites States Parties to forward a list of references of articles or books in connection with the Evidence Convention that do not already appear on the bibliography tab on the website of the HCCH.

A list of articles dealing exclusively with the Evidence Convention or with subjects including it is to be found below; it makes no claim to completeness.

Mario Leitzen, Die grenzüberschreitende Beweisaufnahme in Zivilsachen, Jura 2007, 201-205;

Oliver Bolthausen, Offenlegungspflichten deutscher Unternehmen in US discovery-proceedings, MDR 2006, 1081-1084;

Tobias Kessler, Zeugenvernehmungen für einen Zivilprozess in den USA, GRUR Int 2006, 713-715;

Martin Reufels, Maxi Scherer, Pre-Trial Discovery nach dem Haager Beweisübereinkommen, IPRax 2005, 456-459;

Malte Richter, Bessere Aussichten für das Haager Beweisübereinkommen? RIW 2005, 815-826;

Rolf A. Schütze, Zum Stand des deutsch-amerikanischen Justizkonflikts, RIW 2004, 162-167;

Daniel Busse Umfang des Fragerechts bei Beweisaufnahmen nach dem Haager Beweisübereinkommen, IDR 2004, 193-195;

Martin Reufels Pre-Trial-Discovery und Haager Beweisübereinkommen: jüngste Entwicklungen und Hinweise für die Praxis; IDR 2004, 189-193;

Stefan Huber Die Europäische Beweisaufnahmeverordnung (EuBVO) - Überwindung der traditionellen Souveränitätsvorbehalte? GPR 2004, 115-122;

Serge-Danie Jastrow Sitzung der Expertenkommission der Haager Konferenz für Internationales Privatrecht vom 28.10. bis 4.11.2003 zu Fragen des Zustellungsübereinkommens vom 15.11.1965, des Beweisaufnahmeübereinkommens vom 18.3.1970 sowie des Apostillenübereinkommens vom 5.10.1961, RabelsZ 2004, 533-540;

Burkhard Hess Transatlantischer Rechtsverkehr heute: Von der Kooperation zum Konflikt? JZ 2003, 923-926.

- 13) The Permanent Bureau invites States Parties to forward a citation for and / or a copy of the domestic legislation which implemented the Evidence Convention in their territory(ies), as well as any citations for and / or copies of any domestic laws which provide for the taking of evidence in aid of foreign proceedings.

a) Law to implement the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Gesetz zur Ausführung des Haager Übereinkommens of 15 November 1965 über die Zustellung gerichtlicher und aussergerichtlicher Schriftstücke im Ausland in Zivil- oder Handelssachen) and to implement the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (Haager Übereinkommens vom 18. März 1970 über die Beweisaufnahme im Ausland in Zivil- oder Handelssachen) (Federal Law Gazette 1977 I p. 3105).

b) Regulation on Judicial Assistance in Civil Matters (Rechtshilfeordnung für Zivilsachen - ZRHO) (situation as of 2007); may be downloaded from the Internet at [http://www.datenbanken.justiz.nrw.de/pls/jmi/ir\\_start](http://www.datenbanken.justiz.nrw.de/pls/jmi/ir_start) .

- 14) The Permanent Bureau invites States Parties to forward a list of any other bilateral treaties and / or international instruments to which they are a party and that provide rules for the taking of evidence abroad.

[See the list under question 2 above](#)

## PART Two – substantive issues

### I. Mandatory or non-mandatory character of the Evidence Convention and “blocking statutes”

#### A. Question as to whether or not the Convention is of mandatory character

The 2003 Special Commission noted that there were still diverging views as to whether or not the Evidence Convention is mandatory (see Conclusion and Recommendation No 37). The Permanent Bureau believes that this divergence is, at least partially, attributable to the lack of coherent use and understanding of the relevant terminology. With a view to further clarifying this important and sensitive matter, the Permanent Bureau would like to recall and firmly establish the precise meaning of the terminology employed.

The basic question at stake is the following: *Must a State Party (more precisely, a judicial authority, diplomatic officer, consular agent or commissioner of a State Party) have recourse to the Convention on each occasion that it intends to take evidence that is located in another State Party? At the next Special Commission, this question as to whether a State Party may take evidence in the territory of another State Party only pursuant to the Convention or whether it may also take evidence in another State Party by other means (in particular, by those means provided for by its own domestic legislation) will be examined under the heading of whether or not the Convention is of a mandatory character. If the Convention is considered to be mandatory, evidence must always be taken pursuant to the means provided for by the Convention. If, however, the Convention is considered to be non-mandatory, a State Party may, in principle, also have recourse to means other than those provided for by the Convention.*

If the Convention is considered to be *non-mandatory*, an additional question is whether a court may order evidence to be taken in another State Party by methods outside the Convention *even if the State in which the evidence is to be taken would consider that such actions violate its sovereignty, trade activities or secrecy policies*. These considerations (which in some jurisdictions are generally referred to as *comity issues*<sup>4</sup>) assume particular significance if and when the State where the evidence is to be taken has implemented legislation which in effect proscribes the taking of certain types of evidence in its territory by methods outside the Convention (see the comments and questions below under “B. Blocking statutes”).

Unlike the Hague Service Convention, it serves no real and distinct purpose to discuss whether or not the Evidence Convention has the additional quality of being *exclusive*. Whilst the two concepts of whether the Convention is mandatory and exclusive serve clear and distinct purposes when describing the Service Convention,<sup>5</sup> this is not the case

---

<sup>4</sup> The term “comity” is not known or used in all jurisdictions; it refers to the courtesy among political entities or courts, involving especially mutual recognition of legislative, executive and judicial acts.

<sup>5</sup> See Permanent Bureau, *Practical Handbook on the Operation of the Hague Service Convention* (2006), paras 15-48; Conclusions and Recommendations Nos 73 and 74 of the 2003 Special Commission. A number of important differences exist between the Hague Service and Evidence Conventions. Most importantly, the Service Convention sets out in Art. 1 that it “shall apply in all cases [...] where there is occasion to transmit a [...] document for service abroad”. The language “where there is occasion to transmit” has been taken to mean that the Service Convention is *non-mandatory* in the sense that it is a matter for the *law of the forum* to determine whether a document must be transmitted for service abroad. The use of the word “shall” has been taken to mean that the Service Convention is *exclusive* however, in the sense that once the law of the forum has determined that a document must be transmitted abroad for service, the channels of transmission

for the Evidence Convention. Under the Evidence Convention, only one question arises: whether or not evidence abroad *must always* be taken pursuant to the Convention.

Based on these comments, the Permanent Bureau would like to ask the following questions:

- 15) Does your State consider that the Evidence Convention is mandatory or non-mandatory?

[The answer to this question is given by the European Community.](#)

Mandatory – please explain:

Non-mandatory – please explain:

- a. If your State considers the Convention to be *non-mandatory*, does it nonetheless consider that “State interests” (such as sovereignty, trade or secrecy policies) of the State where the evidence is to be taken must be taken into consideration (see also question 16)?

YES – please explain:

NO – please explain:

## B. Blocking statutes

- 16) In order to prevent foreign applicants from obtaining certain types of evidence, some States have enacted blocking statutes to prohibit persons from providing (and even sometimes from requesting) evidence within their territory when that evidence would ultimately be used by foreign authorities. Blocking statutes typically attempt to protect State interests such as sovereignty, trade activities or bank and secrecy policies. Has your State adopted any such laws?

[The answer to this question is given by the European Community.](#)

NO

YES – please specify:

- a. The purpose, nature and content of these laws (if these laws are in a language other than English or French, a brief summary into either of these languages would be appreciated):
- b. Under what circumstances the blocking statute may prevent the execution of a request for the taking of evidence made under the Evidence Convention and / or in which circumstances or conditions (if any) the blocking statute may be lifted and the request for evidence executed:
- c. Whether these blocking statutes have been applied by the courts of your State to “block” the taking of evidence in your State, and if so, under what circumstances (please provide references to and brief summary in English or French of relevant court decisions):
- d. Whether the courts of your State have actually taken measures against

---

expressly available or otherwise permissible under the Hague Service Convention are the only channels that may be used.

(e.g., fined) witnesses, experts, etc., for having given evidence in violation of a blocking statute?

YES – please specify:

NO

## II. Scope of the Evidence Convention

### A. Interpretation of the phrase “civil or commercial matters”

17) In Conclusions and Recommendations Nos 69 to 72, the 2003 Special Commission urged for a broad and liberal interpretation of the phrase “civil or commercial matters” (Art. 1) and reaffirmed the Conclusions adopted at the 1989 Special Commission regarding the scope of the Evidence Convention.

a. Has the interpretation of the phrase “civil or commercial matters” given rise to specific issues in your State (either as a requested or a requesting State) since 2003?

YES

(i) What were they and how have they been solved?

(ii) Have the authorities of your State followed the Conclusions and Recommendations of the 2003 Special Commission?

YES

NO

(iii) Please provide details and / or a copy of any relevant decision(s) (if these decisions are in a language other than English or French, a brief summary into either of these languages would be appreciated):

NO

b. Has (any of) the Central Authority(ies) of your State been in direct contact with an authority of another Contracting State to discuss the interpretation of this phrase (so as to decide whether or not to execute a Letter of Request)?

YES – please briefly explain the circumstances and modalities of any exchange:

NO – please explain why there was no communication on this issue:

18) Regardless of whether a matter has actually arisen, please indicate (by placing a “YES” or a “NO” in the relevant box) which of the following types of matters the authorities of your State consider as falling within the scope of the phrase “civil or commercial matters”:

It is not possible to answer this question by giving a clear yes or no. It always depends on the subject of the dispute in the individual case. Ultimately, therefore, it is the courts alone that take the binding decision as to what is and what is not to be seen as a civil matter. In this context, the following answers are to be seen only as a general guideline.

Bankruptcy or insolvency in general

Reorganisation under bankruptcy laws

Insurance

Social Security

- Employment
- Taxation
- Anti-trust and Competition
- Consumer protection
- Regulation and oversight of financial markets and stock exchange (*e.g.*, in matters possibly involving insider trading)
- Proceeds of crime
- Other matters (please specify):

**B. Interpretation of the terms “commenced or contemplated” (Art. 1(2)) and / or “commenced” (Arts 15(1) and 16(1))**

- 19) In Conclusion and Recommendation No 36, the 2003 Special Commission recommended that States Parties submit information to the Permanent Bureau as to how Article 1(2) was being interpreted and, in particular, what domestic judicial proceedings would be regarded as “contemplated” for the purpose of this provision. If possible, please provide any relevant information in this respect:

From the German point of view, the concept “contemplated judicial proceedings” is to be understood in a broad sense. In principle, it is sufficient for there to be already cause for legal proceedings because the parties are in deep dispute over a state of affairs (Knöfel, Kommentar zum HBÜ, in: Geimer/Schütze, Internationaler Rechtsverkehr in Zivil- und Handelssachen, Loseblatt, situation as of 2007, A i 3f, marginal note 36 with further evidence from literature and legal decisions). Accordingly, it is in particular the German law’s proceedings for the preservation of evidence under Section 485 ff of the German Code of Civil Procedure (Zivilprozessordnung - ZPO) that falls under the area of application of the Evidence Convention.

Has the interpretation of the terms “commenced or contemplated” in Article 1(2) given rise to any difficulties in your State (either as a requested or a requesting State)?

YES – please specify:

NO

- 20) If your State has not objected to the application of Chapter II of the Evidence Convention (or part thereof), has the interpretation of the term “commenced” in Articles 15(1) and 16(1) given rise to any difficulties in your State (either as a requested or a requesting State)?

YES – please specify:

NO

- 21) Does your State agree that the term “commenced” should be given a uniform interpretation across Articles 1(2), 15(1) and 16(1)?

YES

NO – please specify:

**C. Arbitration proceedings**

- 22) The 2003 Special Commission noted that in some instances, and in accordance with the internal law of some States, the Evidence Convention has been made available

for use in arbitration proceedings. The Special Commission stressed however that a request for the taking of evidence under the Evidence Convention in the context of arbitration proceedings would have to be presented by the relevant judicial authority of the State where those proceedings were taking place.

Has your State received or presented a request according to the abovementioned condition?

YES – has this condition given rise to any particular issues? Please specify:

NO

### III. Taking of evidence by video-link

The Conclusions and Recommendations adopted by the 2003 Special Commission expressed general support for the use of modern technologies under the Evidence Convention, including the taking of evidence by video-link,<sup>6</sup> to further facilitate the efficient operation of the Evidence Convention (Conclusions and Recommendations Nos 4 and 42). The following questions are designed to provide the Permanent Bureau with specific information as to whether video-links are actually used in practice, and if so, by which States and under what circumstances.

#### A. General legal framework

23) Does your State consider that there are *legal* obstacles to the taking of evidence by video-link under:

a. Chapter I of the Convention

NO – please explain what your State considers to be the legal basis for the taking of evidence by video-link under the Convention (*e.g.*, does your State base the use of video-link on the functional development and medium neutral interpretation of the Convention in light of modern technologies or do you base the use of video-link under the Convention on specific provisions such as Arts 7 or 8?):

The term “taking of evidence” is open, allowing the taking of evidence by video-link to be included.

The taking of evidence by video-link for foreign court proceedings is regarded as a special form of taking evidence which may take place without any specific provision because it does not contradict the principles of German law. The persons concerned however, whose image and voice are transmitted have to agree for their evidence to be taken by video-link as in German law.

YES – please specify what these obstacles are:

---

<sup>6</sup> The reference to video-link includes all videoconferencing and any other modes of visual technology connections (including webcams).

## b. Chapter II of the Convention

NO – please explain what your State considers to be the legal basis for the taking of evidence by video-link under the Convention (*e.g.*, does your State base the use of video-link on the functional development and medium neutral interpretation of the Convention in light of modern technologies or do you base the use of video-link under the Convention on specific provisions such as Art. 19?):

YES – please specify:

*It is not guaranteed that the persons concerned have agreed for their evidence to be taken by video-link.*

**B. Chapter I – Incoming Letters of Request**

24) Since 2003, has (one of) the Central Authority(ies) of your State *received* any Letters of Request which required or otherwise involved the use of a video-link in their execution?

YES

a. How many Letters of Request of this nature were received?

b. Which States sent these Letters of Request?

c. Were all of these Requests in fact executed using video-links?

YES (please answer questions d. to f. below)

NO (please answer question g. below)

d. Please describe and comment on the nature of the technology that your authorities use to execute incoming Letters of Request via video-links (*e.g.*: Do they use a secured video-link operated on a private network or a (unsecured) webcam connection over the Internet? etc.):

e. Have there ever been any technical problems (*e.g.*, incompatibility of video systems used) in the execution of such a Letter of Request? Please explain further (*e.g.*, were the problems overcome and if so, how?):

f. Have there been any language barriers in the execution of these Letters of Request?

NO

YES

In particular, when a Letter of Request is executed in your State by video-link:

(i) Does the relevant authority of your State have to use professional accredited interpreters or does it rely on the parties or their counsel?

Professional accredited interpreters required

Parties or their counsel

(ii) Does the relevant authority of your State have to use simultaneous interpretation (voice over)?

YES

NO

- (iii) Does the relevant authority of your State have to use in sequence interpretation (in order to hear the original language)?
- YES
- NO
- (iv) Does the law of your State require that the proceedings be interpreted in both jurisdictions or only in your State?
- Interpretation only required in your State
- Interpretation required in both States
- (v) Who pays for the cost of the interpretation?

- g. If any Letter of Request which required or requested the use of a video-link was not ultimately executed in this way, please explain further why this was the case:

NO

- 25) If applicable, how did (or would) the relevant Central Authority and / or the relevant judicial authority handle a request that required or requested the use of a video-link if the witness was / is not willing to give evidence using such technology?

The further proceedings depend on the circumstances of the individual case. The German authority would coordinate further proceedings with the Central Authority of the other contracting party. Should the latter agree to the taking of evidence in a "normal" form, the request would be dealt with in that form. If not, the request for evidence to be given in a "special" form would have to be refused.

### C. Chapter I – Outgoing Letters of Request

- 26) Since 2003, have the judicial authorities of your State *forwarded* Letters of Request abroad which required or otherwise involved the use of a video-link in their execution?

YES

- a. How many Letters of Request of this nature were forwarded?
- b. To which States were these Letters of Request sent?
- c. Were all of these Requests in fact executed using video-links?
- YES (please answer questions d. to f. below)
- NO (please answer question g. below)
- d. Please describe and comment on the nature of the technology that your authorities use when their Letters of Requests are executed abroad via video-link (*e.g.*: Do they use a secured video-link operated on a private network or a (unsecured) webcam connection over the Internet? etc.):
- e. Have there ever been any technical problems (*e.g.*, incompatibility of video systems used) in the execution of such a Letter of Request? Please explain further (*e.g.*, were the problems overcome and if so, how?):
- f. Have there been any language barriers in the execution of these Letters of Request?
- NO

YES

In particular, when a Letter of Request is executed in another State by video-link:

(i) Does the relevant authority of your State have to use professional accredited interpreters or does it rely on the parties or their counsel?

Professional accredited interpreters required

Parties or their counsel

(ii) Does the relevant authority of your State have to use simultaneous interpretation (voice over)?

YES

NO

(iii) Does the relevant authority of your State have to use in sequence interpretation (in order to hear the original language)?

YES

NO

(iv) Does the law of your State require that the proceedings be interpreted in both jurisdictions or only in your State?

Interpretation only required in your State

Interpretation required in both States

(v) Who pays for the cost of the interpretation?

g. If any Letter of Request which required or requested the use of a video-link was not ultimately executed in this way, please explain further why this was the case:

NO

#### **D. Chapter II – Evidence taken in your State**

27) Provided that your State has not declared against the application of all or part of Chapter II of the Evidence Convention, has evidence in fact been taken (where applicable, after the relevant permission had been granted) in your State since 2003 under Chapter II by video-link?

YES

a. On how many occasions?

b. For the proceedings of which State(s) was the evidence taken?

c. Please describe and comment on the nature of the technology that is used in your State for the taking of evidence in your State under Chapter II by video-links (*e.g.*: Is it a secured video-link operated on a private network or a (unsecured) webcam connection over the Internet? etc.):

d. Have there ever been any technical problems (*e.g.*, incompatibility of video systems used) in the taking of evidence in your State under Chapter II by video-links? Please explain further (*e.g.*, were the problems overcome and if so, how?):

e. Have there been any language barriers in the taking of evidence in your State under Chapter II by video-links?

NO

YES

In particular, when evidence is taken in your State by video-links under Chapter II:

(i) Does the law of your State impose a requirement to use professional accredited interpreters or may one rely on the parties or their counsel?

Professional accredited interpreters required

Parties or their counsel

(ii) Does the law of your State impose a requirement to use simultaneous interpretation (voice over)?

YES

NO

(iii) Does the law of your State impose a requirement to use in sequence interpretation (in order to hear the original language)?

YES

NO

(iv) Does the law of your State require that the proceedings be interpreted in both jurisdictions or only in your State?

Interpretation only required in your State

Interpretation required in both States

(v) Who pays for the cost of the interpretation?

f. If the taking of any evidence which required or requested the use of a video-link was not ultimately executed in this way, please explain further why this was the case:

NO

28) Have there been Chapter II cases in your State that required or requested the use of modern technologies but that have ultimately not been executed in your State as a result of the witness not being willing to give evidence using such technology?

No.

#### **E. Chapter II – Evidence sought in another State**

29) Since 2003, has evidence in fact been taken in another State by video-link under Chapter II for ultimate production in proceedings in your State (where applicable, after the relevant permission had been obtained)?

YES

a. On how many occasions?

- b. For the proceedings of which State(s) was the evidence taken?
- c. Please describe and comment on the nature of the technology that is used in your State for the taking of evidence in another State under Chapter II by video-links (*e.g.*: Is it a secured video-link operated on a private network or a (unsecured) webcam connection over the Internet? etc.):
- d. Have there ever been any technical problems (*e.g.*, incompatibility of video systems used) in the taking of evidence in another State by video-links under Chapter II? Please explain further (*e.g.*, were the problems overcome and if so, how?):
- e. Have there been any language barriers in the taking of evidence in another State by video-links under Chapter II?
- [ ] NO  
[ ] YES

In particular, when evidence is taken in another State by video-links under Chapter II:

- (i) Does the law of your State impose a requirement to use professional accredited interpreters or may one rely on the parties or their counsel?
- [ ] Professional accredited interpreters required  
[ ] Parties or their counsel
- (ii) Does the law of your State impose a requirement to use simultaneous interpretation (voice over)?
- [ ] YES  
[ ] NO
- (iii) Does the law of your State impose a requirement to use in sequence interpretation (in order to hear the original language)?
- [ ] YES  
[ ] NO
- (iv) Does the law of your State require that the proceedings be interpreted in both jurisdictions or only in your State?
- [ ] Interpretation only required in your State  
[ ] Interpretation required in both States
- (v) Who pays for the cost of the interpretation?

- f. If the taking of any evidence which required or requested the use of a video-link was not ultimately executed in this way, please explain further why this was the case:

[X] NO

- 30) Is your State aware of Chapter II cases that required or requested the use of modern technologies but that have ultimately not been executed in the other State as a result of the witness not being willing to give evidence using such technology?

No.

**F. General questions regarding the use of modern technologies**

- 31) What are the specific capabilities of your State with regards to the taking of evidence using modern technologies? In particular, are all or some of the Courts of your State equipped with computers, Internet access, videoconferencing equipment, audio recording devices to record oral evidence or testimony, etc.?

The German courts are largely equipped with computers allowing them Internet access.

Videoconferencing equipment is available above all at the Regional and Higher Regional Courts. The Local Courts may also use these facilities, however. Some of this equipment is mobile videoconferencing equipment that can be used at different locations.

- 33) Does your State consider that the use of modern technology under the Evidence Convention should be further encouraged by adopting a common framework? If so, does your State believe that a *Guide to Good Practice* that addresses the use of modern technology under the Convention would be sufficient? Or does your State believe that an *Additional Protocol* to the Evidence Convention relating to the use of modern technologies is necessary?

The answer to this question is given by the European Community.

- No additional document required  
 Guide to Good Practice sufficient  
 Additional Protocol necessary

If necessary, please explain further:

## CHAPTER THREE – OTHER OPERATIONAL ISSUES

### I. Chapter I – Letters of Request

#### A. Preparation of Letter of Request

34) Has the (a) Central Authority of your State assisted a foreign judicial authority in preparing a Letter of Request for the taking of evidence within your State? In particular, has the Central Authority of your State provided information on the available possibilities for the taking of evidence under the law of your State?

The Central Authorities have given different answers to this question. Some of them have not yet received a request for support. They would provide information in such a case, however, but would not provide legal advice. The others responded by saying yes.

YES – please specify:

Examples:

Information on the permissibility of cross-examination,

Information on lawyers' right to interrogate witnesses,

Explanations of the formal requirements to be fulfilled by a Letter of Request.

NO – please specify if the (a) Central Authority of your State *would* provide this type of assistance if a request for such assistance was made in the future:

35) Has (or would) the (a) Central Authority of your State provided the same assistance to the representatives of the parties?

Only some of the Central Authorities is willing to provide the same assistance to the representatives of the parties. The reason given, for example, is that in some contracting states, the representatives of the parties are required to prepare the letter of request by themselves and are therefore the real questioners. The others responded by saying no.

YES – please specify:

NO – please specify:

There is no legal obligation towards the representatives of the parties.

36) Under the laws of your State, do you require the Letter of Request to include *specific questions* that will be used during witness examination or only a list of *matters to be addressed*?

The answer to this question, too, very much depends on the individual case and cannot be answered in general terms. The starting point is Article 3 (f) of the Evidence Convention. According to this Article, the Letter of Request is required to contain specific questions to the person to be questioned or to specify precisely the facts on which they are to be questioned. The Central Authorities give different answers to the question of whether a list of matters to be addressed is sufficient here. A majority of them still call for a list of questions. However, according to a large minority view, a list of matters to be addressed would suffice if it is not intended to seek disclosure by an adversary of facts supporting a case.

## B. Recommended use of model Letter of Request form

37).The 1978 Special Commission recommended the use of a model for the Letter of Request form. This form was modified by the 1985 Special Commission and is currently the recommended model form available on the website of the HCCH. Do the judicial authorities of your State use the model Letter of Request form?

At least some of the Central Authorities use the form. Insofar as a negative answer was given to the question, the following reasons were decisive:

YES

NO – please specify why they do not use the model form:

[The form is only available in English.](#)

[Use of the form is not provided for in the Regulation on Judicial Assistance in Civil Matters \(ZRHO\).](#)

[A full text facilitates examination of the request.](#)

## C. Transmission of Letters of Request (Art. 2)

38) In your State, are Letters of Request:

a. Sent directly from a judicial authority in your State to the Central Authority of the requested State?

YES

NO

b. If no, are they first sent to the Central Authority of your State, or to any other authority of your State, in order for that authority to transmit the Letter of Request to the requested State?

YES – please explain the policy considerations behind this practice:

NO – please explain, if applicable, what other practices your State has developed in this context. Please explain what policy considerations are behind such other practices:

39) Does the Central Authority of your State accept Letters of Request that have been sent from abroad by (private) courier service?

YES

NO – please explain:

40) Does the Central Authority of your State accept Letters of Request that have been sent from abroad by electronic means (*e.g.*, e-mail or fax)?

[There is no statutory provision as to whether incoming Letters of Request that have been sent by electronic means are to be accepted or not. However, for outgoing Letters of Request, the Regulation on Judicial Assistance in Civil Matters \(ZRHO\) prescribes that they are to be signed by a judge and stamped with an official stamp or with an official seal.](#)

This starting point leads to incoming Letters of Request being treated differently by the different Central Authorities. A minority accept Letters of Request that have been sent by

electronic means. The majority do not yet wish to take this step, but are more liberal with regard to transmission by telefax.

YES

NO – please explain:

As in the case of outgoing Letters of Request, a signature and official seal or stamp is required in the case of incoming Letters of Request.

There is not yet a cross-border electronic signature to identify the origin and authenticity of the Letter of Request.

#### D. Contesting Letters of Request

41) Can the sending of a Letter of Request abroad be contested in your State as a *requesting* State?

YES – please explain how:

In Germany, the implementation of international mutual assistance in civil proceedings is categorised as judicial administration. Anyone asserting that his rights have been violated by a legal act by the judicial administration may appeal to the competent court under Sections 23 ff of the Introductory Act to the Judicature Act (Einführungsgesetzbuch zum Gerichtsverfassungsgesetz - EGGVG).

However, only a few cases are conceivable where this will be the case.

a. How often does such a challenge occur in practice?

Almost always

Often

Rarely

Never

NO

42) Can the execution of a Letter of Request received from abroad be contested in your State as a *requested* State?

NO

YES – please explain by what means:

The Letter of Request is dealt with in the form defined by the Central Authority of the requested State, for example in a form not provided for in the law of the requested state and with appropriate measures of compulsion. This judicial action may also violate rights of the persons involved in proceedings.

a. How often does such a challenge occur in practice?

Almost always

Often

Rarely

Never

b. Which authority is responsible for informing the requesting authority or the parties concerned of the fact that the execution of a Letter of Request has been contested in your State?

Central Authority

Judicial authority competent to execute the Request

Other authority – please specify:

No information of challenge to execution is provided

- c. Does the relevant authority in your State inform the *requesting authority* or the *parties concerned* of the fact that the execution of the Letter of Request has been contested in your State?
- Requesting authority  
 Parties concerned  
 Other – please specify:
- d. By what channel does the authority in your State inform the requesting authority or the parties concerned of the fact that the execution of the Letter of Request has been contested in your State?
- Informal channel (letter, e-mail, fax, telephone, etc.)  
 In most cases, notification is informal, but in writing in a letter or in a telefax and a letter.
- Formal channel (*e.g.*, via the Hague Service Convention if applicable, or via diplomatic channels)  
 In a few cases, the formal channel is used.
- e. Is the foreign requesting authority or the interested party permitted to present counter arguments in favour of the execution of the Letter of Request?
- NO  
 YES – please explain by what means:  
 The competent Higher Regional Court hears the case pursuant to Section 25 of the Introductory Act to the Judicature Act (EGGVG). It is mandatory to be represented by a lawyer before the Higher Regional Court.
- Through legal representation in your State  
 Through written response filed directly from abroad from the requesting authority  
 Through written response filed directly from abroad from the interested party  
 Other – please explain

43) Does your State (as a *requested* State) allow a party who has already unsuccessfully contested the sending of a Letter of Request from the *requesting* State for the taking of evidence to then contest the execution of a Letter of Request for the taking of evidence under the laws of your State?

Such cases are difficult to imagine. Without a precedent, it is practically impossible to make an assessment. However, a foreign decision might not be recognised or executed on account of the fact that the object of the dispute is not a civil or commercial matter, but a dispute under public law. There is a tendency to answer the question by saying yes in principle.

- YES – please explain:  
 Unless there is specific legal justification, an unsuccessful contest in the requesting state has no effect in the requested state.
- NO

## E. Execution of the Request

44) Before whom is a hearing for oral examination under Chapter I convened in your State?

Judge / Magistrate / Special Master / Judicial officer – please explain:

In Germany, such hearings are held by a judge in principle.

Private examiner commissioned by the executing authority – please explain:

Notary – please explain:

Other – please explain:

45) Under the laws of your State, are Chapter I hearings public or private?

Public

Unless the proceedings are ones from which, as an exception, the public is excluded in Germany, for example for the purpose of protecting minors. The judge may also himself ask certain individuals to leave the courtroom for reasons of misconduct or other current importance.

Private

Comments:

46) Do the judicial authorities of your State (as the requested State) “blue-pencil” Requests, *i.e.*, rephrase, restructure and / or strike out objectionable questions or offensive wording so that a Letter of Request may be executed under the laws of your State?

Here, too, the answer very much depends on the individual case. The Central Authorities generally endeavour to make it possible to deal with a Letter of Request of the kind referred to in the above question. They delete or rephrase certain passages after consulting with the requesting authority. However, if a certain measure of shocking questions or offensive paragraphs is exceeded, the Central Authorities do not execute the Letter of Request. Thus, both yes and no have been marked as answers.

YES (rephrase, restructure and / or strike out)

NO (the Request will simply be rejected)

47) Under the laws of your State, is the witness provided in advance with a copy of the questions / matters to be addressed as contained in the Letter of Request, so that he or she has an opportunity to prepare for the oral examination?

YES

NO

However, it cannot be ruled out that the witness is informed of the questions by sources other than German agencies.

48) Under the laws of your State, are documents which are produced by a witness authenticated by the court? (Note: the term authentication refers to a chain of custody, not legalisation or issuance of an Apostille)

YES

NO

49) Under the laws of your State, is an oath generally administered to the witness?

YES

A witness shall be sworn in in principle pursuant to Section 391 of the German Code of Civil Procedure (ZPO) unless the court refrains from doing so for specific reasons.

NO

50) Under the laws of your State, can the witness be made subject to further examination and recall?

YES – if so, must the recall be initiated through a second Letter of Request or can the first Request be re-invoked?

First Request may be re-invoked

Second Request necessary

If the first Letter of Request has been finally dealt with and the documents returned, a new request must be made. If this is not yet the case, the original request may be supplemented.

NO

51) Under the laws of your State, if documents are to be presented to the witness during oral examination (*e.g.*, to refresh the memory of the witness), must these form a part of the Request itself and / or be pre-approved by the Court? Must they be authenticated in some way? Please explain:

These documents must be mentioned and their content described in the Letter of Request and they must be written in or translated into German. In case of their submission, the judge is required to examine them. It depends on the individual case whether authentication or similar formality is required.

52) Under the laws of your State, what are the sanctions for non-appearance of a witness?

The sanctions are provided for in Section 380 of the German Code of Civil Procedure (ZPO). The witness may be charged for the costs caused by his failure to attend. A disciplinary fine may also be imposed on him and in such case as the payment of this fine cannot be enforced, confinement for contempt of court may be imposed.

53) Under the laws of your State, must interpreters who assist with the witness examination be court-certified?

YES

NO

Under Section 189 Paragraph 1 of the German Judicature Act (Gerichtsverfassungsgesetzes - GVG) the interpreter is required to make an oath before the court prior to taking up his activity. If he has been sworn in generally for interpretation of the kind in question, reference to the oath he has taken shall suffice (Section 189 (2) of the German Judicature Act [GVG]).

54) Under the Laws or practice of your State, how is testimony transcribed?

A record shall be made of the taking of evidence. Further details are regulated by Sections 159 ff of the German Code of Civil Procedure (ZPO).

55) Under the laws or practice of your State, to whom is the final transcript delivered?

Representatives for the parties

Requesting authority

Other – please explain:

56) Under the laws of your State, how is a Letter of Request withdrawn (*e.g.*, in circumstances where a matter has been settled)? Must such a request for withdrawal come from the requesting authority or may it come from the representatives of the parties or the parties themselves?

Representatives of the parties

- Parties themselves
- Requesting authority
- Other – please explain:

#### F. Presence of counsel or parties (Art. 7)

57) Which authority in your State (as a requested State) is responsible for informing the requesting authority of the time and place of execution of the Letter of Request in order for the parties and their representatives to be present if they so desire?

- Central Authority
- Judicial authority competent to execute the request
- Other – please explain:

58) How often does such a request occur in practice?

- Almost always
- Often  
Particularly in relations with the USA.
- Rarely  
In other cases.
- Never

59) Does the relevant authority in your State inform the *requesting authority* or the *parties concerned* of the time and place of execution of the Letter of Request?

The legal practice of the Central Authorities varies. What is decisive in the first instance is the Letter of Request itself and any requests to be informed it contains. In such cases as a request has been expressed in the Letter of Request for the parties and their representatives to be informed directly, as provided for in Article 7 of the Evidence Convention, this request shall be complied with. If not, only the requesting authority will be informed.

- Requesting authority
- Parties concerned
- Representatives of the parties
- Other – please explain:

60) By what channel does the relevant authority in your State inform the requesting authority or the parties concerned or their representatives of the time and place of execution of the Letter of Request?

- Informal channel (letter, email, fax, telephone, etc.)  
In the overwhelming majority of cases, the informal channel is chosen. Notification is given in writing, however.
- Formal channel (*e.g.*, via the Hague Service Convention if applicable, or via diplomatic channels)

61) What are the remedies available in your State (as a *requested* State) for the foreign requesting authority, parties and / or their representatives when your State has failed to notify the requesting authority or the parties concerned or their representatives of the time and place of the execution of the Letter of Request, even though such notification was requested?

No provision is made for any specific remedies here.

62) What are the remedies available in your State (as a *requesting* State) for the requesting authority, parties and / or their representatives, when the requested State has failed to notify the requesting authority or the parties concerned or their representatives of the time and place of the execution of the Letter of Request, even though such notification was requested?

No specific remedies are provided for here. However, the fact that the party or its representatives were unable to take part in the taking of evidence plays a role in evaluating the evidence taken abroad.

63) Under the laws of your State, may the representatives of the parties who attend the hearing ask additional follow-up questions at the conclusion of the executing authority's examination? Or must these legal representatives speak through locally licensed counsel? Or, alternatively, must they present their follow-up questions in writing to the court? Or, alternatively will your State allow representatives for the parties to examine and cross-examine the witness directly in the presence of the executing authority? Please explain:

The taking of evidence is carried out according to the German law on civil procedure in principle. The questioning of the witness concerning his person follows the questioning of the witness on the matter in hand. Here, under Section 396 Paragraph 1 of the German Code of Civil Procedure (ZPO), he is to be given the opportunity in the first instance to present his perceptions on the subject on which evidence is to be given in summary form. When the court has then fulfilled its duty of discovery and duty to interrogate witnesses to complete the statement, the parties' right to ask questions begins pursuant to Section 397 of the German Code of Civil Procedure (ZPO). According to Section 397 (2) of the German Code of Civil Procedure (ZPO), it is primarily the parties' lawyers who have the right to directly question witnesses. If a foreign lawyer can operate in court alone in Germany under European Community law or under German law, he does not require the support of a domestic colleague to ask questions, but in principle may participate independently in the taking of evidence. If this is not the case, only the domestic colleague is authorised to ask direct questions. The party usually exercises its right to ask questions by submitting questions to the witness (Section 397 (1) of the German Code of Civil Procedure (ZPO)). However, the party may also be permitted by the court to interrogate the witness directly. A limit is placed on the parties' right to ask questions, however, when the question no longer serves the purpose of interrogation or of exhausting the subject on which evidence is to be given. Thus, for example, exploratory questioning and questions that have as their subject not the witness's actual perceptions but his value judgements are inadmissible. Cross-examination is unknown in German civil proceedings.

#### **G. Presence of "members of the judicial personnel" (Art. 8)**

64) Since 2004, has the competent authority designated by your State under Article 8 of the Convention authorised the presence of members of the judicial personnel of the requesting State at the execution of Letters of Request in your State?

YES

a. Please indicate which States have presented such requests:

USA

- b. To what extent are members of the judicial personnel of a foreign State actively able to participate and ask questions in the execution of a Letter of Request?

Under Section 10 of the German law implementing the Evidence Convention, members of the foreign court may be present for the taking of evidence if this has been permitted by the competent Central Authority. They do not usually intervene actively in the taking of evidence, however. The questions to be addressed to the person to be interrogated are to be asked already in the Letter of Request (Article 3 (f) of the Evidence Convention). The German judge shall ask the witness these questions. In such case as further questions should arise from the interrogation, he is also required to ask these questions in order to investigate the facts of the case on which the witness is giving evidence if they do not go beyond the Letter of Request.

NO

#### H. Privileges (Arts 11 and 21 e))

65) Since 2004, has the execution of a Letter of Request for the taking of evidence in your State involved a situation whereby the person concerned refused to give evidence as a result of a privilege or duty that that person claimed?

Only a few Central Authorities report that witnesses had appealed to a right to refuse to give evidence.

YES

- a. On what frequency do persons claim such privileges in your State:

Almost always  
 Often  
 Rarely  
 Never

- b. Please list below the most commonly claimed privileges or duties (if not necessary, do not complete all 5 spaces):

1.  
2.  
3.  
4.  
5.

- c. For the privileges listed in b., please indicate in the correlating 5 spaces below (by inserting "(i)", "(ii)" or "(iii)"), whether the privilege(s) that were claimed were:

(i) under the law of the State of execution (Art. 11(1) a));  
(ii) under the law of the State of origin (Art. 11(1) b));  
(iii) under the law of States other than the State of origin and the State of execution (if your State has made a declaration under Art. 11(2)):

1.  
2.  
3.  
4.  
5.

- d. As the State of execution, if the person concerned wishes to claim a privilege over evidence that was the subject of a Letter of Request sent to your State, what procedures governs that claim of privilege in your State?

NO

### I. Translation (Art. 4(1))

66) Does your State consider that Article 4(1) also applies to the documents attached to a Letter of Request?

YES

This is provided for in detail under Section 60 of the Regulation on Judicial Assistance in Civil Matters (ZRHO).

NO

### J. Costs

67) If your State has more than one official language, in the execution of a Letter of Request and in accordance with Article 4 (3), has there ever been the need for your State to request that the costs of translation of the Letter of Request into the required language of your State be borne by the State of origin?

YES

NO

68) With respect to Article 14(2), has your State ever requested or received a request for the reimbursement of fees and costs occasioned by the use of experts, interpreters or any special procedures under Article 9(2)?

YES – please explain further and comment on how much these reimbursements have been:

In a few cases, costs for the use of interpreters and experts. The Central Authorities did not give any specific information on how much these costs were.

NO

69) In the context of Article 14(3), if the law of your State obliges parties to secure evidence themselves and a suitable person is therefore required to be appointed to secure such evidence under the Convention, has your State previously sought the reimbursement of the costs of this process from the requesting authority (provided that the prior consent of the requesting authority to appoint a suitable person to secure such evidence was obtained)?

Not applicable (*i.e.*, the law of your State does not make such obligations)

YES – please comment on how much these reimbursements have been:

NO (*i.e.*, no reimbursement sought) – please comment on why no reimbursement was sought:

70) With respect to Article 26 and as a result of constitutional limitations in your State, has your State ever requested reimbursement from the requesting State for fees and costs associated with the service of process necessary to compel the appearance of a person to give evidence, the costs of attendance of such persons and the costs of any transcript of the evidence?

Not applicable (*i.e.*, no constitutional limits of this nature would apply in your State)

YES – please comment on how much these reimbursements have been:

NO (*i.e.*, no reimbursement sought) – please comment on why no reimbursement was sought:

## K. Requests for e-discovery

71) Have you received Letters of Requests for *e-discoveries* (*i.e.*, relating to electronically stored information)?

NO

YES

a. Have these Requests been executed?

YES

NO

b. Has your State been asked to follow specific rules or principles? If so, please provide a reference to the rules or principles followed:

NO

YES – please specify:

c. In particular, did the execution of these Requests raise any issue relating to the protection of privacy?

NO

YES – please specify:

d. When transferring the e-evidence to the requesting State, do you encounter compatibility problems with regard to the technology (software) used?

Almost always

Often

Rarely

Never

## L. Requests that a special method or procedure be followed in the taking of evidence (Art. 9(2))

72) Has your State received or sent any Request that the taking of evidence follow a “special method or procedure”?

Some Central Authorities have received such requests.

YES – please explain what these methods or procedures were and if such a Letter of Request was ultimately executed:

The following procedures were carried out:

- witnesses are only interrogated under oath in principle.

- a record is made.

- a video/audio recording is made of the interrogation.

The following procedure was not carried out:

- cross-examination.

NO

73) Please indicate if your State has implemented any amendments to its domestic law in order to better accommodate foreign requests for special methods or procedures to be followed in the taking of evidence (*e.g.*, a verbatim transcript or the tape recording of oral evidence or questioning under cross-examination) in accordance with Article 9.

YES – please specify and provide copies or references to those relevant laws or articles that reflect any amendments to domestic law (if these excerpts are not in English or French, a summary into either of these languages would be appreciated):

NO

#### M. Pre-trial discovery of documents (Art. 23)

74) The 2003 Special Commission extensively discussed the history, purpose and meaning of Article 23 (see Conclusions and Recommendations Nos 29 to 34). It “recommended that States which have made a general, non-particularised declaration under Article 23 *revisit their declaration* by considering an amendment adopting terms such as those contained in the UK declaration or in Article 16 of the Inter-American Protocol<sup>7</sup>.”

If your State still has a broad declaration on record, why has it not acted upon the 2003 Conclusions and Recommendations? Please explain:

There is no reason to do so. Germany allows Letters of Request submitted in pre-trial discovery proceedings to be processed to an appropriate extent within the country. Such requests can be dealt with under Section 14 Paragraph 2 of the law implementing the Evidence Convention insofar as this is not precluded by fundamental principles of German procedural law.

Not applicable (*i.e.*, your State had not made a declaration under Art. 23)

75) Under the laws of your State, if the portion of a Letter of Request which seeks documents is too general and therefore cannot be honoured, will that also taint that portion of the Request which seeks oral testimony – *i.e.*, will the Request be rejected in its entirety?

Request for oral evidence will be executed

Request will be rejected in its entirety

#### II. Taking of evidence by diplomatic officers, consular agents and commissioners (Chapter II)

76) Pursuant to Article 18, a Contracting State may declare that a diplomatic officer, consular agent or commissioner authorised to take evidence may apply to the competent authority designated by the declaring State for appropriate assistance to obtain evidence by compulsion. If your State has made such a declaration, please indicate whether the competent authority of your State has been asked to provide such assistance:

YES – please comment on what frequency such assistance has been provided:

Often

Sometimes

Rarely

a. Please indicate which methods of compulsion were most frequently used and whether they were effective:

---

<sup>7</sup> Additional Protocol of 1984 to the Inter-American Convention on the Taking of Evidence Abroad (Inter-American Protocol).

b. Which of the following have been assisted by the competent authority to obtain evidence by compulsion (please select all if applicable):

Diplomatic Officers, Consular agents

Commissioners

NO

77) If your State has objected to the total or partial application of Chapter II, please indicate why:

[Not applicable.](#)

*Thank you!*

\* \* \*